NO. 1937

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MAY TERM, 1911

MAGGIE ELLEN PARR, et al,
Appellants.

vs.

LOUISE COLFAX,
Appellee.

BRIEF OF APPELLANTS

Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow and Orville D. Townsend.

Appeal from the United States Circuit Court for the District of Oregon.

LOWELL and WINTER, Attorneys for Appellants last above named.

THE LIVE WIRE, PENDLETON, ORE.

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STATEMENT OF THE CASE

This suit was instituted in the United States Circuit Court for the District of Oregon, for the purpose of de-

termining who is entitled to the possession, rents, issues and profits of a certain tract of land located in Umatilla County, Oregon, upon the Umatilla Indian reservation.

The land involved a tract consisting of eighty acres, was alloted to Isaac Gober, a mixed blood Indian, under Act of Congress, approved March 3, 1885. This allotment to Gober was approved by the Commissioner of Indian Affairs on the 12th day of April, 1893. On or about the 24th day of November, 1899, said Isaac Gober died.

After his death and on June 4, 1907, Rosa Parr, one of the appellants, filed her complaint in the Circuit Court of the United States for the District of Oregon, praying for a decree declaring her to be the sole heir at law of said Isaac Gober, deceased, and as such, the owner of and entitled to the possession of said lands, so allotted to said Isaac Gober, and also entitled to all the rents, issues and profits of said lands. (Transcript of Record, page 4).

Said Rosa Parr died on or about the 15th day of May, 1910, and while said suit instituted by her was pending. At the time of her death said Rosa Parr left surviving her three children, Maggie Ellen Parr, Julia Agnes Parr and Ezra Wallace Farrow, and also a husband, Orville D. Townsend. On August 13, 1910, these three children, to-wit: Maggie Ellen Parr, Julia Agnes Parr and Ezra Wallace Farrow, filed a bill of revivor in said court, praying that the suit instituted by said Rosa Parr, having become abated by reason of her death, should be revived

and restored, and further praying for a decree declaring that the heirs of said Rosa Parr are entitled to the possession of the lands allotted to said Isaac Gober, deceased. (Transcript of Record, page 15.) To this bill of revivor an answer was filed, (Transcript of Record, page 22) by the United States of America, Trustee, Orville D. Townsend and Louise Colfax and E. L. Swartzlander, to which answer plaintiffs in said bill of revivor filed their replication, (Transcript of Record, page 26). On August 17, 1910, Louise Colfax filed a cross complaint. In this cross complaint said Louise Colfax is plaintiff and Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow, Orville D. Townsend, E. L. Swartzlander and the United States of America are defendants. (Transcript of Record, page 29.)

In her cross complaint said Louise Colfax claims to be the sole heir of said Isaac Gober and, therefore, entitled to the possession and use of the tract of land allotted to said Gober. An answer to this cross bill by the said cross defendants was filed, (Transcript of Record, page 45) and a replication to the answer, (Transcript of Record, page 53). On the 17th day of August, 1910, a decree was made and filed in this suit whereby it was determined that said Louise Colfax was the owner and entitled to the possession and usufruct of said land allotted to said Isaac Gober, (Transcript of Record, page 54). The testimony in this case was taken before a Special

Master and was returned without findings of fact or conclusions of law.

This case presents primarily a legal proposition. In her cross complaint said Louise Colfax claims that in the year 1895 she and said Isaac Grober, while residing upon the Umatilla Indian reservation, intermarried "by then and there agreeing with each other, under the laws and customs of said tribes of Indians located and residing upon the said Umatilla Indian reservation, to live and cohabit together as husband and wife." (Transcript of Record, page 39). In the answer to the cross complaint it is denied that said Isaac Gober and said Louise Colfax were ever married and it is alleged that the facts are that said Isaac Gober and Louise Colfax, by mutual consent, lived and cohabited together at different intervals between the ——— day of ———————, 1895, and until said Isaac Gober died, and that they were never married pursuant to any laws of the State of Oregon, and were not married at all, unless living and cohabiting together by consent as husband and wife, as a matter of law, constitutes a marriage. (Transcript of Record, page 50). Rosa Parr, the plaintiff who first instituted this suit, was clearly the sole heir of said Isaac Gober, unless the relations which existed between Isaac Gober and the woman Louise Colfax amounted to a valid marriage. Therefore, there is presented first the question as to the effect of marriages according to Indian customs, entered into after al-

lotments of lands in severalty upon the Umatilla reservation.

ERROR.

We contend that the trial court erred in finding and holding that the said Louise Colfax was the lawful wife of the said Isaac Gober (see Transcript of Record, page 54); that the court erred in holding that the child which was born to said Louise Colfax was the heir of the said Isaac Gober, and that upon the death of said child Louise Colfax became the sole equitable owner of the lands allotted to said Isaac Gober. (For particular specifications of error see Transcript of Record, pages 118, 119 and 120).

INTRODUCTION.

This case is of great importance. The main question involved affects every Indian upon the reservation. The validity of an Indian marriage, according to Indian custom, or of an Indian divorce, according to Indian custom, after allotment, so far as we are able to ascertain, has never been determined by the Federal Courts, excepting in this and one other case, decided the same time this one was decided, and by the same court.

If the relations which existed between Louise Colfax and Isaac Gober, deceased, were meretricious only, then the land alloted to said Isaac Gober descended at the time of his death, under the laws of the State of Oregon, to said Rosa Parr, as his next of kin and sole heir.

BRIEF OF ARGUMENT.

1. Prior to conferring citizenship upon them and while living in their tribal relations Indian tribes were considered distinct communities, "domestic, dependent nations," and as such their domestic relations were governed by their own customs and laws. The State laws had no control over them.

Worchester vs. U. S., 6 Pet., 515, 8 Law ed., 483, 499, 500 and 508.

Kansas Indians, 5 Wallace, 537.

U. S. vs. Kagama, 118 U. S., 375.

2. And a marriage, therefore, then entered into between members of a tribe, according to the law or custom of such tribe, (such tribe constituting a separate nation) is valid, because the validity of a marriage is governed and controlled by the laws of the country where it is entered into.

Earl vs. Godley, 42 Minn., 361.

Kobogum vs. Jackson Iron Co., 76 Mich., 498.

3. The act of February 8, 1887, (24, Stat., 388, Sec. 6) has this provision: "That upon the completion of

said allotments and the patenting of lands to said allotees, each and every member of the respective bands or tribes of Indians shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside, and no territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law and every Indian born in the territorial limits of the United States, to whom allotment shall have been made, under the provisions of this act, **or under any law or treaty**, and every Indian born within the territorial limits of the United States, who has voluntarily taken up within said limits his residence separate and apart from any tribe of Indians therein and has adopted the habits of civilized life, and every Indian in Indian Territory is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges and immunities of such citizens, whether said Indian by birth or otherwise a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property." Under this act Indians may become citizens of the United States in three ways: (1) By being alloted under the provision of the Act of Congress of February 8, 1887. (2) Allotment under any law or treaty, including the act under which the Indians upon the Umatilla reservation were alloted. (3) By taking up within the limits of the

United States a separate residence and adopting habits of civilized life.

4. Therefore, when the allotments of the Umatilla Indian reservation were approved by the Secretary of the Interior, to-wit: on the 12th day of April, 1893, the alloted Indians became citizens of the United States, and by virtue of the Constitution became citizens of the State of Oregon.

5. The Indians upon the reservation having become citizens, their status has been changed and "the jurisdiction of the State over them for all purposes of government becomes full and complete."

Dick vs. U. S., 340. 52nd Law ed., 520.

In re Heff, 197 U. S. 88.

6. Therefore, after the allotment has been approved and citizenship has been conferred upon the Indians of the Umatilla reservation, they must enter into the marriage relation as provided by the law of the State where the ceremony is performed, and a marriage thereafter according to Indian custom, is void.

Hardy vs. LaDow, 83 Pacific, 401.

7. In this State a marriage must be made and en-

tered into with certain required formalities.

Section 5227, of Bellinger & Cotton's Code of Oregon, provides:

"Before any persons can be joined in marriage, they shall produce a license from the County Clerk of the county in which the female resides, directed to any person or religious organization or congregation authorized by this act to solemnize marriage, and authorizing such person, organization or congregation to join together the persons named as husband and wife."

Section 5220 of the same Code provides:

"In the solemnization of marriage, no particular form is required, except that the parties thereto shall assent or declare in the presence of the minister, priest or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife."

8. Without complying with these required formalities the marriage relation cannot be created within the State of Oregon.

Holmes vs. Holmes, 1 Sawyers, 99, 116, 117.

ARGUMENT.

There is no serious controversy about the facts in this suit. By the pleadings it is admitted that Isaac Gober was a mixed blood Indian, residing upon the Uma-

tilla Indian reservation and that while residing upon the reservation there was alloted to him, pursuant to the Act of Congress, approved March 3, 1885, eighty acres of land; that at the time of this allotment was made Isaac Gober was unmarried and over eighteen years of age; that the allotment so made was approved by the Commissioner of Indian Affairs on the 12th day of April, 1893, and that a trust patent for the eighty acre tract was issued to said Isaac Gober; that on or about the 24th of November, 1899, Isaac Gober died and that at the time of his death his sole heir was either Rose Parr, his sister, who instituted this suit, or the unborn child of Louise Colfax, the cross complainant herein.

The testimony in this suit shows that during the last two or three years of his life Isaac Gober lived and cohabited with Louise Colfax, and that Louise Colfax at the time of said Isaac Gober's death was living with him and claimed that she was married to him; that sometime about the year 1895 she and Isaac Gober had agreed to become husband and wife, and thereafter lived and cohabited together as such, and that according to the Indian custom this constituted a valid and binding marriage.

The evidence also discloses that two children were born to Louise Colfax. One was born and died prior to the death of Isaac Gober, and the other was born shortly after the death of said Gober and died in infancy.

The testimony further discloses that it was the custom upon the reservation among the Indians to live together and cohabit together by consent, and that this constituted a marriage, according to Indian custom; that a large number of Indians upon the Umatilla Indian reservation since allotment of lands to them in severalty was made, entered into the marriage relation, pursuant to the laws of the State of Oregon, but that others lived together by mutual consent, without any marriage ceremony whatever.

It is alleged in the cross complaint of Louise Colfax, (see paragraph 9, page 37 of the Transcript of Record) that at the time of the allotment of the lands of the Umatilla reservation there were about 1045 Indians entitled to allotment on the reservation. Of these 393 belonged to the Cayuse tribe, 196 to the Umatilla tribe and 456 to the Walla Walla tribe, and that there were alloted to the Indians about 100,000 acres of land on said reservation, and that the heads of families of the Indians received 160 acres, the adults, not heads of families, 80 acres, and the infants 40 acres each; that about 50,000 acres of the reservation is still held for the use of the Indians on the reservation, in common.

In paragraph 11 of the cross complaint, (see Transcript of Record, page 38), it is averred that it is the custom of the Indians belonging upon the Umatilla reservation for the males and females to intermarry by merely

agreeing to live together and by cohabiting as husband and wife, without other or further ceremony, act or proceeding, and for a husband and wife to terminate the marriage relation and become divorced by agreeing to separate, or by either husband or wife ceasing to live with his or her consort, and that they may become divorced at will, without any proceeding or ceremony whatever.

In the answer to the cross bill, (see Transcript of Record, page 47), it is admitted and alleged that prior to the allotment of lands in severalty to the Indians upon the reservation, some of the Indians lived and cohabited as husband and wife, without any marriage ceremony, and by mere agreement, while the members of some of the tribes were married according to a certain ceremony which consisted of giving presents and feasts by the parents of the contracting parties, and that prior to allotment of the lands in severalty, according to custom, some of the Indians on the reservation lived and cohabited with a plurality of wives, without entering into the marriage relation, otherwise than by mutual consent and agreement, but it is alleged that since the allotment of lands a large majority of them, to-wit: about 70 per cent, have become and are married, pursuant to the laws of the State of Oregon, and that since the allotment some of the Indians upon said reservation still live and cohabit as husband and wife, without being married at all, except that they live together by mutual consent, but that these who

live together as husband and wife, without a formal marriage, do not exceed 30 per cent of the total number of Indians upon said reservation.

By the testimony it is shown that some of the Indians on the reservation still live and cohabit together as husband and wife, without attempting to be married pursuant to the requirements of the laws of the State of Oregon, and without any ceremony or proceeding except consent of the parties.

The testimony does not disclose just what portion of the Indians, after allotment, were married according to this Indian custom. The testimony of Charlie Van Pelt (Transcript of Record, page 106) shows that at the time when he came to the reservation, about 1895 or 1896, only Christians were married by law; that about one-fourth of the Walla Walla tribe were Catholics and the most of the Cayuse tribe were members of the Catholic church and that most of the Umatillas were Presbyterians, and that this was the condition at the time he came to the reservation, about 1895, and that the proportion among the mixed bloods who lived together, without being married by law, was about the same as that of the full blood Indians.

No contention is made on behalf of Louise Colfax that she and Isaac Grober were ever married, unless the fact she lived and cohabited with Isaac Grober after allotment of land to him and prior to his death, a period of two or

three or four years, amounted to a valid marriage. If it did, then we concede that she is entitled to lands in controversy. If not, we contend that under the laws of this State the lands of Isaac Grober, upon his death, would have descended to Rosa Parr, as his next of kin and sole heir. Therefore, the vital question was the effect of an attempted marriage, according to Indian custom, after allotment of lands in severalty to the Indians upon the Umatilla Indian reservation.

Both the judicial and political departments of our government have always recognized an Indian tribe as constituting a separate political body. The Constitution grants power to Congress "to regulate commerce with the nations, among the several states and **Indian tribes.**" The Government has always dealt with them as a separate people. Up to 1871 our Government frequently made treaties with the various Indian tribes in this country and carried on war with the Indian tribes as with a separate nation.

In the case of Roff vs. Barney, 168, U. S. 218, 221, our Supreme Court uses this language: "The condition of the Indians and the Indian tribes within the limits of the United States is anomolous. The tribes, though in certain respects regarded as possessing the attributes of nationality, are held to be.....domestic, dependent nations." This language or language to this effect is found in nearly all the decisions of the United States Supreme

Court, pertaining to Indians living in tribal relation prior to allotment.

For the benefit of the tribes, tracts of land were set apart by treaty or by law. These tracts are commonly known as reservations. The tribes had a right to the possession of the reservation. Their title consisted in the right of occupancy by the tribe.. The individual Indian did not own any of the land or have any legal right to it, and when an individual Indian separated from his tribe, he no longer had any right to the use of the land upon the reservation. A member of a tribe, "although in a geographical sense born in the United States," is not a citizen. The clause in the Constitution: "All persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States," does not apply to Indians who are members of a tribe.

Elk vs. Wilkins, 112 U. S., 94.

The individual Indian owed no allegiance to the United States, but only to his tribe and its chiefs.

As separate nations, Indian tribes were permitted to make their own laws and to regulate and govern their domestic affairs. For this reason a marriage entered into between members of a tribe of Indians according to the custom of the tribe, constituted a valid marriage, under

the familiar rule of law that the validity of a marriage is controlled by the law of the country where it is entered into, and for the same reason a divorce between members of an Indian tribe or a separation, according to their custom, was recognized by both the Federal and State Courts.

Even polygamy among Indians belonging to a tribe, if according to the custom of the tribe, is lawful and upheld by the courts.

This was the status of the tribal Indians in this country up to the time that they became citizens. They were not subject to the laws of the State and were not entitled to the rights and privileges of a citizen. If, however, Indians became permanently separated from their tribes, they ceased to be a part of a tribe, and became subject to the laws of the State in which they resided.

In the case of the Eastern band of Cherokee Indians against the United States, (117 U. S., 288, 303) the Supreme Court held that those Cherokees in North Carolina who had dissolved their connection with the Cherokee Nation, when they refused to accompany the Cherokee Nation when it removed to the West, had no separate political organization. Of the 1100 or 1200 Cherokee Indians who remained in North Carolina when the Cherokee Tribe or Nation, pursuant to treaty, moved to their "new home" west of the Mississippi, the Supreme Court uses this language: "They ceased to be a part of the Cherokee Nation and henceforth they became citizens of

and were subject to the laws of the State in which they resided."

On the Umatilla Indian Reservation allotments were made in accordance with the provisions of the act of March 3, 1885, (23 Stat. L., 340.) These allotments were approved by the Secretary of the Interior on the 12th day of April, 1893. As soon as the allotments were approved the allotees became citizens of the United States, by virtue of the act of February 8, 1887, (24 Stat., 388, Sec. 6) and by virtue of this act they "shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they reside." After the allotments of lands to the Indians in severalty, the Government no longer deals with the tribes, as such, but with the individual Indian. The chiefs lose their authority. The Individual Indian no longer owes allegiance to his chief and his tribe, but to the United States and his State. If they should, after becoming citizens, still maintain or attempt to maintain their tribal relations, this could have no legal significance at all. We, therefore, contend that after the tribal relation becomes extinct, after they are made citizens of the United States, citizens of the State in which they reside, they can no longer make laws governing their domestic relations. There can be no marriage, according to Indian law or according to the customs of the tribe, because no separate political body exists which could enact laws, and for this reason their

marriages must be entered into and divorces, if any had, in conformity with the laws of the State of Oregon.

Nearly all of the Indians upon the Umatilla Indian Reservation were alloted and became citizens and subject to the laws of the State of Oregon. It would be certainly a strange anomoly to hold that, notwithstanding these Indians are citizens of this State, they may enter into the marriage relations or become divorced according to a custom which existed among the Indian tribe at a time when it constituted a separate nation, and to hold that these Indians may carry on polygamy or end their martial relations at the wish of either party, without the consent or sanction of the State of which they are citizens.

In the case in Re Heff the Supreme Court of the United States fully considered the effects of the act of February 8, 1887, (24 Stat. L., 388) and holds that an Indian allotee is a citizen of the United States and of the State in which he resides, and becomes subject to the laws, both civil and criminal, of the State where he resides.

Upon the Umatilla Reservation there were 1045 Indians, to whom was alloted in round numbers 100,000 acres of land. The heads of families received each 160 acres, persons over the age of 18 years 80 acres, orphan children under 18 years of age 80 acres, and to each child under 18 years, not otherwise provided for, 40 acres.

These allotments were made pursuant to the Act of March 3, 1885 (23 Stat. L., 340). After these Indians received their allotments and the same were approved, they became citizens of the United States and of the State of Oregon. The Government of the United States placed an agent upon the reservation to look after their interest and protect them, dealing with the individual Indians and no longer with the tribes, as a political body. The Indians by virtue of becoming citizens owed allegiance to the Government and none to their tribes or chiefs They cannot be deprived of the right to the land alloted to them, even if the tribe, as such, should move entirely off of the reservation. To claim that, notwithstanding that all of these Indians are now citizens, and notwithstanding that they owe allegiance to the United States and to the State, they still are in a position to continue their tribal relations and to be members of some other nation and make their own laws, regulate their domestic and social affairs and absolutely disregard the laws pertaining to marriage and divorce of the State of which they are citizens, is almost absurd.

Many of these Indians have no regard for the marriage contract whatever. According to the old custom that prevailed among them they can become married by consent and cohabitation, and they can become divorced by separating at the wish or whim of either consort. One Indian may have one or more wives.

The allotments were made to assure stability of the family. The head of a family, whether husband or wife, as the case might be, received 160 acres, and yet if these Indians can become married and divorced, without any legal proceeding, excepting their own wish or consent, then the allotment to the head of a family of 160 acres gave no protection whatever to the other members of the family, because the head of the family might separate from his wife, without procuring any divorce, and lawfully marry another. His wife could not bring suit for a divorce, because the husband could allege that under the Indian law he was legally divorced from her by separating from her, and in this way, though the husband would have been alloted as the head of a family, his wife would not be entitled to support from him, and would have no proper remedy to compel him to support her or to pay her alimony.

If these tribal relations still continue after the Indians become allotees and citizens, have they still the power to carry on war? Would it be a defense for an Indian to claim that under the direction of his chief he had killed one of his co-citizens, a white man, off of the reservation, as was contended by the Indian known as "Plenty Horses?" and held in a case in South Dakota in 1890 (see Thayer essay, "A People Without Law.") This would certainly be an absurd situation.

We do not maintain that the United States has not the

right and the power to make regulations upon reservations. The title to land, though alloted to Indians in severalty, still remains to the Government, and as long as the title to the lands upon the Indian reservation remains in the Government it is Indian country, and the Government has jurisdiction over crimes committed in Indian country, and as long as the title to lands in Indian country remains in the Government and it is trustee, it has the right to make such regulatios as it may deem wise for the purpose of fulfilling the trust. The fact that tribal regulations have been abolished does not take away from the Government the power to protect the Indians or make such regulations for their protection upon the reservation as may seem fit.

Taylor vs. Brown, 147 U. S., 640.

We, therefore, contend that allotees upon the Umatilla reservation must enter into the marriage relation as is required by the laws of the State of Oregon, and must comply with the laws in attempting to annul the marriage contract. In this State common law marriage is not permitted.

Holmes vs. Holmes, 1 Saw., 99.

The relations that existed between Louise Colfax and Isaac Gober, deceased, did not amount to a valid mar-

riage. The laws of the State of Oregon were not complied with, and Louise Colfax was not the wife of Isaac Gober.

However, it will be contended by counsel for Louise Colfax that Louise is entitled to the possession of this land and the use of the same, even if she was not lawfully married to Isaac Gober, for the reason that under the law of the United States this land descended to Louise's child which was born shortly after the death of Isaac Gober. This contention will be made under the amendment of 1901, (26 Stat. L. 795) which amends the fifth section of the Act of February 8, 1887, commonly known as the Dawes Act, which amendment is as follows: "That for the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of the fifth section of said act, whenever any male and female Indians have cohabited together as husband and wife according to the custom and manner of Indian life, the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child."

If this amendment to the act of 1887 affects the Slater Act, that is the Act of March 3, 1885, and is operative upon the Umatilla Indian reservation, then the child of Louise would become legitimate and Louise, its mother, would become the heir of the child and, consequently,

the lands of Isaac Gober, upon his death, would pass to the child, when born alive, and upon the death of the child would pass to Louise, its mother, and not to Rosa Parr and her heirs.

This amendment was considered by the Supreme Court of the State of Oregon in the case of McBean vs. McBean, 37 Ore., 195, and we believe that our Supreme Court there correctly determined that the amendment has no application to the Act of March 3, 1885, commonly known as the Slater Act.

It certainly is not reasonable to assume that when Congress amended the fifth section of the Dawes Act, the Act of 1887, in express language, it could be deemed to have intended to have amended any other act or that the language of said amendment could be regarded as applicable to any other act. Such would be contrary to every rule of statutory construction.

The reading of Section 5 of the Act of February 8, 1887, which appears on page 494 of the Third Volume of Federal Statues Annotated, together with said amendment thereof, which appears at the bottom of page 501 of said volume, clearly indicates what the intention of Congress was.

In the case of McBean vs. McBean, 37 Ore., 195, (paragraph 4, page 206) the Supreme Court of the State of Oregon declared: "The act of 1885 was special in its nature, affecting none but the Umatilla Indian reserva-

tion and the confederate tribes inhabiting the same, while the act of 1887 was general in its purpose. It seems there was no intention of extending its provisions to the Umatilla reservation and Indians concerned. The allotments are made upon an entirely different basis and the acts are otherwise incongruous, so that the general act could not well supercede the special act, without repealing it, and no such intention is made apparent from the terms of the general act."

The Act of 1885 provides that the laws of alienation and descent of the State of Oregon shall apply. We, therefore, submit there was no valid marriage between Louise Colfax and Isaac Gober; that the child born to Louise was illegitimate and that the special amendment of 1901 to Section 5 of the Act of 1887 has no application to the Act of March 3, 1885, and, therefore, that the lands in question, upon the death of Isaac Gober, descended to his sister, Rosa Parr, and not to the unborn child of Louise Colfax. Therefore, the decree of the Trial Court should be reversed.

Respectfully submitted,

LOWELL & WINTER,

Solicitors for Appellants Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow and Orville D. Townsend.